Office-Supreme Court, U.S.
FILED
JUN 15 1981
ALEXANDER L. STEVAS,
CLERK

80-2111

No.

IN THE

Supreme Court of the United States

October Term, 1980

AMERICAN BELL INTERNATIONAL INC.,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BEFORE JUDGMENT

DAVID GINSBURG,
Counsel of Record,
LEE R. MARKS,
ALAN S. WEITZ,
SUSAN A. COBB,
JAMES F. WALLACK,

GINSBURG, FELDMAN, WEIL AND BRESS
Suite 300
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 637-9000

Attorneys for Petitioner, American Bell International Inc.

Of Counsel:
JAMES A. DEBOIS
FRANK M. STEADMAN, JR.
195 Broadway
New York, NY 10007
(212) 393-9800

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

QUESTIONS PRESENTED FOR REVIEW

1. Does the President have authority to nullify an attachment obtained by a U.S. national against property of Iran, in a pending action, without providing an alternative forum in which meaningful relief can be obtained?

2. Does the nullification of an attachment obtained by a U.S. national against property of Iran constitute an uncompensated taking in violation of the Fifth Amendment when the U.S. national cannot proceed before the Iran-U.S. Claims Tribunal and may be unable to obtain relief from the Court of Claims?

TABLE OF CONTENTS

Page

Questions Presented For Review i

Table of Authorities iv

Opinion Below 2

Jurisdiction 2

Constitutional Provisions, Statutes, Executive Agreements, Executive Orders and Regulations Involved 2

Statement of the Case 3

Proceedings Below 3

The President's Actions 5

The District Court Order 8

Reasons for Seeking Review Before Judgment by the Court of Appeals 9

Reasons for Granting the Writ 10

1. Arbitrability 11

2. IEEPA 13

3. Fifth Amendment 17

Conclusion 19

Exhibit A E1

PRECEDING PAGE WAS BLANK

TABLE OF AUTHORITIES

Cases: **Page(s)**

American International Group, Inc. v. Islamic Republic of Iran, No. 80-1779 (D.C. Cir. June 5, 1981) (typescript opinion) 8, 15, 16, 18

Charles T. Main International, Inc. v. Khuzestan Water & Power Authority, Nos. 80-1027, *et al.* (1st Cir. May 22, 1981) (typescript opinion) 16. 18

Cities Service Co. v. McGrath, 342 U.S. 330 (1952) 18

Hughes Aircraft Co. v. United States 534 F.2d 889 (Ct. Cl. 1976) 18

Orvis v. Brownell, 345 U.S. 183 (1953) 16. 17

Propper v. Clark, 337 U.S. 472 (1949) 14

Regional Rail Reorganization Act Cases, 419 U.S 102 (1974) 18

Swift & Co. Packers v. Compania Colombiana Del Caribe, 339 U.S. 684 (1950) 2

Zittman v. McGrath, 341 U.S. 446 (1951) 15, 16

Zittman v. McGrath, 341 U.S. 470 (1951) 14

Constitutional Provisions, Statutes and Rules

Constitution of the United States
Art. I, § 8 2

Art. II § 2 2

Art. II, § 3 2

Amendment 5 2

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.* (Supp. 1980) 2, 5

Trading With the Enemy Act, 50 U.S.C. App. §§ 1 *et seq.* (Supp. 1980) 2, 14

28 U.S.C. § 1254 ..... 1, 2

28 U.S.C. § 1292 ..... 2, 9

28 U.S.C. § 1330 2

28 U.S.C. § 1502 2

28 U.S.C. § 1605 ..... 2, 18

Arms Export Control Act, 22 U.S.C. §§ 2251 *et seq.* (1979) 4

D.C. Code § 16-501(e) (1973 ed.) 4

Rules of the United States Supreme Court, Rule 18 ..... 1, 11

Executive Orders, Regulations, and Executive Agreements

Executive Order 12170,
November 14, 1979 ..... 2, 5

Executive Order 12205,
April 7, 1980 2

Executive Order 12277,
January 19, 1981 ..... 2, 7

Executive Order 12279,
January 19, 1981 ..... 2, 7

Executive Order 12280,
January 19, 1981 ..... 2, 7

Executive Order 12281,
January 19, 1981 ..... 2, 7

Executive Order 12294,
February 24, 1981 ..... 2, 7, 8

31 C.F.R. § 535.213
(46 Fed. Reg. 26477 as amended by
46 Fed. Reg. 30341) 3

31 C.F.R. § 535.214
(46 Fed. Reg. 26477 as amended by
46 Fed. Reg. 30341) 3

31 C.F.R. § 535.215
(46 Fed. Reg. 14334 as amended by
46 Fed. Reg. 26477) 3

31 C.F.R. § 535.218
(46 Fed. Reg. 14334 as amended by
46 Fed. Reg. 26477) 3

31 C.F.R. § 535.221
(46 Fed. Reg. 14335 as amended by
46 Fed. Reg. 30341) 3

31 C.F.R. § 535.222
(46 Fed. Reg. 14336) 3

31 C.F.R. § 535.418
(44 Fed. Reg. 75353, removed effective
January 19, 1981, 46 Fed. Reg. 14337) 3, 6

31 C.F.R. § 535.504
(44 Fed. Reg. 67617 as amended by
46 Fed. Reg. 14336) 3, 6, 7, 8

31 C.F.R. § 535.805
(46 Fed. Reg. 66834) 3

Declaration of the Government of the Democratic
and Popular Republic of Algeria 3, 6, 7, 8

Declaration of the Government of the Democratic
and Popular Republic of Algeria Concerning
the Settlement of Claims by the Government of
the United States of America and the
Government of the Islamic Republic of Iran 3, 6, 7, 11

Miscellaneous

White House Press Release,
November 14, 1979 ..... 5, 19

IN THE

Supreme Court of the United States

October Term, 1980

No.

AMERICAN BELL INTERNATIONAL INC.,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BEFORE JUDGMENT

Petitioner, American Bell International Inc. ("ABII"),[1] respectfully petitions this Court, pursuant to 28 U.S.C. § 1254(1) and Rule 18 of the Rules of this Court, for a Writ of Certiorari to the Court of Appeals for the District of Columbia Circuit, prior to judgment, in the case of *American Bell International Inc. v. Islamic Republic of Iran et al.*, No. 81-1652.

---

[1] A list of ABII's parent companies and affiliates is included as Exhibit A to this Petition. ABII has no subsidiaries.

OPINION BELOW

The district court issued no opinion; its order is unreported, and is set forth in the Appendix. App. 1a. The district court ruled from the bench; the ordering portion of the transcript is set forth in the Appendix. App. 5a. There is no Court of Appeals decision or opinion.

JURISDICTION

The order of the district court dissolving the writ of attachment against ABII was entered on June 11, 1981. Notice of Appeal from that judgment under 28 U.S.C. § 1292(a)(1) was filed and docketed (Case No. 81-1652) in the United States Court of Appeals for the District of Columbia Circuit the same day.[2] App. 2a-3a. Under 28 U.S.C. § 1254(1), this Court has jurisdiction to review before judgment the appeal now pending in the Court of Appeals.

CONSTITUTIONAL PROVISIONS, STATUTES, EXECUTIVE AGREEMENTS, EXECUTIVE ORDERS, AND REGULATIONS INVOLVED

This case involves the following constitutional provisions, statutes, executive agreements, executive orders, and regulations: U.S. Constitution, Art. I § 8, Art. II §§ 2, 3, Amendment 5; International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq;* Trading With the Enemy Act, 50 U.S.C. App. §§ 1 *et seq.;* 28 U.S.C. §§ 1254, 1292, 1330, 1502, 1605; Executive Orders 12170, 12205, 12277, 12279-12281, 12294; Iranian Assets Control

---

[2]An order vacating an attachment is an interlocutory order from which the court of appeals has jurisdiction under 28 U.S.C. § 1292(a)(1). *Swift & Co. Packers v. Compania Colombiana Del Caribe,* 339 U.S. 684, 688-89 (1950).

Regulations, 31 C.F.R. Part 535, §§ 535. 213 (46 Fed. Reg. 26477 as amended by 46 Fed. Reg. 30341), 535.214 (46 Fed. Reg. 26477 as amended by 46 Fed. Reg. 30341), 535.215(46 Fed. Reg. 14334 as amended by 46 Fed. Reg. 26477), 535.218 (46 Fed. Reg. 14334 as amended by 46 Fed. Reg. 26477), 535.221 (46 Fed. Reg. 14335 as amended by 46 Fed. Reg. 30341), 535.222 (46 Fed. Reg. 14335), 535.418 (44 Fed. Reg. 75353 removed effective January 19, 1981, 46 Fed. Reg. 14337), 535.504 (44 Fed. Reg. 67617 as amended by 46 Fed. Reg. 14336), 535.805 (44 Fed. Reg. 66834); the Declaration of the Government of the Democratic and Popular Republic of Algeria; the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran. The pertinent texts of the foregoing are set forth in the Appendix.

STATEMENT OF THE CASE

Proceedings Below

On January 30, 1980, petitioner filed suit in the United States District Court for the District of Columbia against the Government of Iran and Iran's Ministry of Defense. Petitioner alleged that defendants had breached two contracts entered into in the mid-1970's under which petitioner was to assist Iran in developing an integrated nationwide telecommunications system. Petitioner sought damages of $69.6 million.

Petitioner's contracts, entered into with the "Imperial Government of Iran", provide that:

> All differences and disputes which may arise between the two parties resulting from interpretation of the Articles of the Contract or the execu-

> tion of the works which cannot be settled in a friendly way, shall be settled in accordance with the laws of Iran and *with referring to the competent Iranian courts.* (Emphasis added.)

On April 1, 1980, defendants moved to dismiss, on the ground, *inter alia,* that venue was improper in light of the contract provision quoted above. On May 9, 1980, after President Carter banned travel by U.S. citizens to Iran, defendants withdrew their venue objection.

On April 30, 1980, the district court ordered a Writ of Attachment before Judgment in the amount of $69.6 million against the defendants' remainder interest in the Foreign Military Sales Fund ("FMS Fund") held by the United States Treasury in Treasury Account No. 97-11X8242.IR, pursuant to the Arms Export Control Act, 22 U.S.C. §§ 2251 *et seq.* (1979). The attachment was served on May 5, 1980, after petitioner posted a bond in the amount of $139.2 million, as required by local law. D.C. Code § 16-501(e) (1973 ed.)

On May 19, 1980, the parties stipulated that the Islamic Republic of Iran had been served by diplomatic note. On October 31, 1980, the district court ruled that petitioner had served the Ministry of Defense.

On August 13, 1980, the United States filed a Suggestion of Interest with the district court requesting that all further proceedings be stayed indefinitely. On October 7, 1980, the district court stayed further proceedings (except for briefing and deciding the issue of adequacy of service). The stay was dissolved by the district court *sua sponte* on January 27, 1981.

The President's Actions

The American Embassy in Tehran was seized on November 4, 1979. On November 14, 1979, President Carter issued Executive Order No. 12170, 44 Fed. Reg. 65,729 (1979). App. 50a, which blocked certain Iranian property. The Executive Order stated that the President was acting pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 *et seq.* (Supp. 1980). In an announcement issued the same day, the White House stated,

> [t]his order is in response to reports that the Government of Iran is about to withdraw its funds. The purpose of this order is to insure that claims on Iran by the United States and its citizens are provided for in an orderly manner. App. 109a.

Treasury regulations issued on November 15, 1979, *inter alia,* blocked the removal or transfer of Iranian assets in the United States, and prohibited any attachment, judgment, lien, or other judicial process with respect to property in which Iran held an interest. *See* 31 C.F.R. Part 535 (1980). On November 26, 1979, Treasury issued a general license authorizing judicial proceedings against Iran, but not the entry of or execution on any judgment or decree. 31 C.F.R. § 535.504(a), (b). On December 19, 1979, a clarifying regulation stated that "the general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachments." 31 C.F.R. § 535.418. App. 79a.

The hostage crisis was resolved through two executive agreements between the United States and Iran, dated January 19, 1981, set forth in the Declaration of the

Government of the Democratic and Popular Republic of Algeria ("General Declaration"), and the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims By the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration").

As relevant here, the General Declaration provided for the resolution of commercial claims by U.S. nationals against Iran and of litigation pending in U.S. courts with respect to such claims. Paragraph B of the General Principles of the General Declaration provides:

> It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration. App. 93a-94a.

The terms of the "binding arbitration" referred to in Paragraph B are contained in the Claims Settlement Declaration, which creates an Iran-U.S. Claims Tribunal with jurisdiction to decide "claims of nationals of the United States against Iran . . . if such claims . . . arise out of debts, contracts . . . expropriations or other measures affecting property rights . . . ." Article II, § 1. App. 102a. However, the Tribunal does not have jurisdiction over:

> claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position. App. 103a.

To satisfy awards rendered by the Tribunal, Iran will deposit in a security account, $1 billion (out of assets returned from the United States, including assets now subject to writs of attachment). General Declaration, ¶7. App. 97a. Whenever the balance in that account falls below $500 million, Iran is to deposit additional funds. *Id.*

Executive Orders 12279, 12280, and 12281, issued on January 19, 1981, to implement the Algerian Declarations revoke the general license for attachments previously granted. 46 Fed. Reg. 7919-24 (Jan. 23, 1981). App. 60a-68a. Executive Order 12294, issued February 24, 1981, confirms the January 19, 1981, Orders and suspends "[a]ll claims which may be presented to the Iran-U.S. Claims Tribunal under the terms of Article II" of the Claims Settlement Declaration. 46 Fed. Reg. 1411 (Feb. 26, 1981). App. 69a. Treasury regulations issued February 26, 1981, effective January 19, 1981, implement these orders. 46 Fed. REg. 14330 *et seq.* (Feb. 26, 1981).

The United States filed a Statement of Interest with the district court on February 26, 1981, seeking to nullify petitioner's attachment. Identical statements were filed in other pending Iran cases.

On March 18, 1981, ABII moved the district court for an order requiring defendants to state their position whether the Tribunal would have jurisdiction of petitioner's claim, in light of the exclusionary language of the Claims Settlement Declaration and the choice-of-Iran court provision of petitioner's contracts with Iran. Petitioner stated that it would vacate its attachment voluntarily if Iran agreed to take the position before the Tribunal that petitioner's claim was cognizable by the Tribunal. App. 14a-15a. Iran refused to take a position, and the district court ruled that it could not compel Iran to do so. App. 10a.

The District Court Order

On June 11, 1981, the district court ruled from the bench that petitioner's attachment be vacated, App. 1a, 5a, on the ground that petitioner's case was controlled by the decision of the Court of Appeals for the District of Columbia Circuit in *American International Group, Inc. v. Islamic Republic of Iran, et al.*, No. 80-1779 (June 5, 1981) (typescript opinion) ("*AIG*"). The district court stayed its order for five business days, to enable ABII to docket an appeal and petition this Court for a Writ of Certiorari before Judgment. App. 1a. The stay terminates upon the final disposition of this action by the Court, or on July 15, 1981, whichever occurs first. Thereafter, the Government will be free to transfer the FMS Fund,[3] leav-

[3] Financial assets in domestic banks must be transferred to Iran by July 19, 1981. General Declaration ¶ 6. App. 96a. Although FMS Funds are not subject to the July 19 deadline, the United States has stated that

ing petitioner with no further access to Iranian assets in this country.[4]

On June 11, 1981, petitioner filed an interlocutory appeal in the United States Court of Appeals for the District of Columbia Circuit (Case No. 81-1652), under 28 U.S.C § 1292(a)(1). App. 2a-3a.

REASONS FOR SEEKING REVIEW BEFORE JUDGMENT BY THE COURT OF APPEALS

Principles of sound jurisdictional administration weigh strongly in favor of certiorari before judgment in this case, so that it may be consolidated and heard with *Dames & Moore v. Donald T. Regan, The Secretary of the Treasury of the United States of America, and the United States of America,* No. 80-2078. Petitioner's case presents somewhat different constitutional issues from those presented in *Dames & Moore.* Both cases, however, grow out of the events in Iran. The issues presented are related and involve consideration of the same executive orders, agreements, statutes, regulations, and precedents. Moreover, unless this Court grants immediate review of the district court order, petitioner's attachment will be vacated and the Government will be free to transfer the attached assets to Iran.

"there is no reason for delay" in transferring the Funds. Reply of the United States to Plaintiff's Response in Opposition to the U.S. Statement of Interest, p. 6, filed with the district court in this action on June 5, 1981.

[4]The February 24, 1981, amendments to the Iranian Assets Control Regulations prohibit prejudgment attachments of assets in which Iran held an interest on November 14, 1979. 31 C.F.R. § 535.504, 46 Fed. Reg. 14336 (Feb. 26, 1981). App. 80a. ABII cannot now attach any "old" Iranian assets, including the FMS Fund, left within the jurisdiction of the United States.

In vacating petitioner's attachment, the district court expressed the view that this case should be heard by the Supreme Court when it disposed of *Dames & Moore:*

> I would like to say that I feel this issue is one that should and can conveniently be joined with the other issues that are approaching the Supreme Court in order that there can be an overall resolution. App. 6a. (Gesell, J.)

If certiorari is granted, petitioner will adhere to the briefing schedule established for *Dames & Moore*.

REASONS FOR GRANTING THE WRIT

Petitioner's case is similar to *Dames & Moore,* but with one important difference: As we read the *Dames & Moore* petition, Dames & Moore challenges the inherent authority of the President to settle claims and his statutory power to nullify attachments, whether or not U.S. claimants are afforded an alternative forum in which to seek relief. That is a far more sweeping challenge to the President's authority than is asserted by ABII. ABII does not challenge the President's authority to settle claims or nullify attachments when an alternative forum for relief is provided. (ABII was and still is prepared to vacate its attachment if it can proceed before the Tribunal.) Petitioner argues only that the President lacks authority to nullify petitioner's attachment *and* agree to a claims settlement program from which petitioner is excluded.

A ruling in *Dames & Moore* that the President may not lawfully nullify attachments for any claimants, whether or not their claims are cognizable by the Tribunal, would preserve ABII's attachment as well.

But the converse is not true. The Court does not necessarily dispose of ABII's claim by ruling against *Dames & Moore.* The Court can sustain ABII's position without invalidating, as to claimants who can proceed before the Tribunal, the action taken to implement the Algerian Declarations and without placing the United States in default of its international obligations.[5] Granting ABII's petition and consolidating it with *Dames & Moore* would thus enable the Court to dispose promptly of all issues presented by the President's nullification of attachments. We respectfully submit that this is of imperative public importance. S.Ct. Rule 18.

We discuss below, *first,* the difference between the ABII forum selection clause and the Dames & Moore clause, *second,* how the forum exclusion issue affects the President's authority under IEEPA and, *third,* how it affects the Fifth Amendment issue.

1. **Arbitrability**

As noted above, the Tribunal does not have jurisdiction over "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts." App. 103a. ABII's contracts with Iran provide that all disputes "shall be settled in accordance with the laws of Iran and with referring to the competent Iranian courts."

The Dames & Moore contract provides that all disputes shall be settled by conciliation before a three-member con-

---

[5]So far as we are aware, only one other reported case, *Touche Ross & Co. v. The Islamic Republic of Iran,* Civ. No. 80-502 (D.D.C.), presents a clear forum exclusion clause.

ciliation board, with "resort to the courts of Iran" only if either party refuses to accept the board's decision.[6]

In the United States Statement of Interest filed in the district court below, the Government expressed its belief that forum selection clauses generally should not be regarded as "binding" because of changed circumstances. It went on to state:

> Even where such an exclusive jurisdiction clause is binding, the United States interprets this provision of the Declaration as excluding from the Tribunal only those claims which arise from contracts that specifically limit the resolution of disputes *solely* to Iranian courts, *i.e.*, claims arising from a contract that allows for arbitration or any other procedure prior to judicial resolution through Iranian courts could be heard by the Tribunal. (Emphasis in original.)

Both Dames & Moore and ABII can argue to the Tribunal that their respective choice-of-Iran-court provision are not "binding", an argument that the United States will support. But, for Dames & Moore, resort to the Courts of Iran is not the "sole" remedy, a fact that the United States finds dispositive.

[6]The Dames & Moore contract clause is as follows:

> Any dispute or disagreement arising under this Contract shall first be discussed amicably by both parties. Failing agreement, such dispute or disagreement shall be submitted to conciliation. Each party shall have the right to appoint one conciliator and a third conciliator shall be appointed by the Plan and Budget Organization of the Government of Iran. In the event that either party is unwilling to accept the decision of the conciliation board, the matter shall be decided finally by resort to the courts of Iran.

Dames & Moore Petition for Writ of Certiorari, p. 7 n.2.

The nullification of attachments obviously has far different consequences for claimants who are excluded from the Tribunal than it does for claimants who can proceed before the Tribunal. If the President's actions are sustained, claimants who can proceed before the Tribunal will have a meaningful alternative remedy in place of their priority interests in particular assets. If Iran fulfills its obligation to replenish the billion dollar security account, claimants can receive full satisfaction of their claims, plus the ability to adjudicate the merits without regard for preliminary defenses (such as sovereign immunity) that might be available to Iran in U.S. courts. Even if Iran does not replenish the fund, claimants will receive at least partial compensation and will be entitled under the Claims Settlement Declaration to enforce Tribunal awards in the courts of any nation.

Claimants excluded from the Tribunal are left with a claim but no practical means to enforce a judgment. They have neither the benefits secured by their prior attachments nor access to the Tribunal. And a claimant who sought to enforce a judgment abroad might well find that the Declarations had created additional hurdles. A foreign court might, for example, decline to recognize the U.S. court judgment on the ground that the Declarations deprived the U.S. courts of jurisdiction over Iranian claims.

2. IEEPA

This is the first time in which a President – acting solely by virtue of his powers to freeze foreign assets – has sought to block assets, nullify property interests therein obtained through judicial process by U.S. claimants, and direct the return of blocked assets to a foreign state. Whatever may be the extent of the President's authority in cases in which he provides an alternative claims settlement remedy, petitioner respectfully submits that the President

has no authority under IEEPA when he provides no alternative remedy.

This Court has held that IEEPA's predecessor, the Trading with the Enemy Act, 50 U.S.C. App. §§1 *et seq.* (Supp. 1980) ("TWEA"), App. 25a, was designed to prevent the transfer of foreign assets in the United States to hostile foreign nations, to secure those assets for the benefit of American creditors, and to provide for an equitable method of distributing foreign assets among American creditors when such assets were insufficient to satisfy outstanding claims. *See Zittman v. McGrath,* 341 U.S. 471, 473-74 (1951); *Propper v. Clark,* 337 U.S. 472, 481, 484 (1949). It is at least arguable that for claimants who will have access to the Iran-U.S. Claims Tribunal, the statutory purposes of TWEA, as carried over in IEEPA, are being met. Clearly, however, the effect of the President's actions with respect to a claimant who will not have access to the Tribunal is contrary to these statutory purposes.

Indeed, the United States itself has recognized the importance of the Tribunal in defending the President's authority to suspend claims and nullify attachments. In its memorandum filed in this Court last week, the United States said:

> The First and District of Columbia Circuit opinions also amply sustain the power of the President to settle claims against Iran *by providing for arbitration of those claims,* particularly in the context of the grave international crisis resulting from the seizure of American hostages . . . . Hence the President has provided a reasonable and fully adequate means for resolving claims against Iran and, *consistent with the*

> *purposes of IEEPA,* has assured the presence of funds to pay arbitration awards out of the Iranian assets that were frozen on November 14, 1979.

Memorandum for Respondents, pp. 11-12, *Dames & Moore v. Regan,* No. 80-2078 (filed June 10, 1981) (emphasis added).

Similarly, in distinguishing the Iranian cases from *Zittman v. McGrath,* 341 U.S. 446 (1951), the D.C. Circuit in the *AIG* decision emphasized the availability of "meaningful relief" in the Tribunal. *AIG* at 38. The Circuit Court said:

> United States policy is perfectly consistent: it seeks to resolve a difficult foreign crisis and safeguard certain legitimate claims of Americans not by, as in *Zittman,* denying a forum, but by remitting the claimants to international arbitration. *AIG* at 22.

This petition calls upon the Court to define the extent of traditional presidential powers to freeze and deal with foreign assets in an international emergency in the light of expressed congressional dissatisfaction with the manner in which those powers have previously been exercised. Congress enacted IEEPA in 1977 specifically to curtail emergency powers previously exercised in peacetime by the President under TWEA. As relevant here, the most important restriction imposed on the President was the removal of the power to seize or vest foreign assets. IEEPA reenacts the President's peacetime emergency authority to freeze foreign assets, relied upon by President Carter on November 14, 1979, and again by President Reagan in nullifying attachments, but denies to the President the authority to seize or vest such assets except in wartime.

In upholding the President's peacetime authority to nullify attachments under IEEPA, the Courts of Appeals for the First and District of Columbia Circuits relied almost exclusively on *Orvis v. Brownell,* 345 U.S. 183 (1953), which dealt with the President's wartime powers under TWEA. The D.C. Circuit found *Orvis* controlling, reading it to hold "that the President, acting under [TWEA], may disregard judicial attachments obtained after foreign assets have been frozen." *AIG* at 20. *Accord Chas. T. Main International, Inc v. Khuzestan Water & Power Authority,* Nos. 80-1027, *et al.* (1st Cir. May 22, 1981) (typescript opinion) ("*Main*"). It distinguished an earlier decision of this Court, *Zittman v. McGrath,* 341 U.S. 446 (1951), which had upheld an attachment of enemy property that was later vested. The D.C. Circuit concluded: "The cases, taken together, therefore indicate that the Supreme Court, while willing to keep the attachments in effect to maintain a forum for the claimants, would not give the attachments any effect as against a federal interest." *AIG* at 22.

Both Courts of Appeals proceeded – in our view mistakenly – on the assumption that the powers at issue in *Orvis* and *Zittman* were the freezing powers. *Orvis* and *Zittman* are in fact cases about the nature of the property interests that can be acquired by vesting under TWEA. *Zittman* held that an attachment was valid despite a freeze order, both as against an enemy debtor and the Custodian seeking to vest the interest of the enemy debtor. *Orvis* reconfirmed the validity of a post-freeze attachment against the enemy debtor but permitted the Custodian to vest the property free of the attachment. *Orvis* does not in fact define the scope of the President's authority absent vesting, the issue before the Court now. And the First and D.C. Circuits would sanction presidential actions under

IEEPA that *Zittman* refused to sanction under the much broader power of TWEA.

To the extent *Orvis* and *Zittman* shed any light on the present situation, they suggest that the President has exceeded his powers at least with respect to his treatment of excluded claimants. This Court indicated in both *Zittman* and *Orvis* that the freeze alone did not operate to nullify claimants' interests in the foreign assets.[7] And in both cases, the U.S. claimant received some relief: in *Zittman* the attachment was upheld; in *Orvis,* although the attachment fell, the U.S. claimant could seek relief against the pool of frozen assets marshalled by the Custodian – the equivalent in this case of the Claims Tribunal.

3. Fifth Amendment

The nullification of petitioner's attachment constituted the taking of a property right for which there is no reasonably certain prospect of compensation. It was therefore an unlawful taking in violation of the Fifth Amendment. For claimants who will not have access to the Iran-U.S. Claims Tribunal, the Fifth Amendment issues are different than for claimants who will have access.

The availability of a meaningful alternative forum in which to seek relief is itself compensation for the nullification of an attachment. Claimants who will not have access to the Tribunal have no present prospect of compensation for the taking of their attachment absent a remedy in the Court of Claims.

---

[7]This Court held in *Orvis* that:

> while [the freezing order] recognized attachment liens insofar as they determined relationships between creditor and enemy debtor, it did not permit the transfer of a property interest in the blocked funds which could be asserted against the Custodian. 345 U.S. at 186-87.

There is substantial question whether the Court of Claims is open to petitioner. That court has no jurisdiction over claims arising out of or dependent upon a treaty or executive agreement. 28 U.S.C. § 1502; *Hughes Aircraft Co. v. United States,* 534 F.2d 889, 903 (Ct. Cl., 1976). The United States does not concede that the Court of Claims has jurisdiction. U.S. Statement of Interest filed February 26, 1981, in the district court, at 21n.[8]

The Court of Appeals for the District of Columbia held that there was no taking because claimants could have no reasonable expectation that the license pursuant to which attachments were obtained would not be revoked. *AIG* at 42-45. The reasonable expectations that Petitioner had, however, were that its attachment would be good against Iran despite the freeze order, an expectation bottomed on *Orvis* and *Zittman,* and that Iranian assets would be applied equitably for the benefit of all U.S. claimants. President Carter announced on November 14, 1979, that he was freezing Iranian assets to protect American claimants. And in licensing judicial proceeding including attachments, the United States noted that licensing litigation:

---

[8]This Court can meet petitioner's Fifth Amendment issue by holding that the Court of Claims will have jurisdiction to compensate petitioner upon a finding that its property was taken. That holding, however, must be made in this case and not at some future time. *Cities Service Co. v. McGrath,* 342 U.S. 330 (1952); *see Regional Rail Reorganization Act Cases,* 419 U.S. 102 (1974). The *AIG* and *Main* courts held, with respect to the President's suspension of claims, that it was premature to consider the taking issue. *AIG* at 38; *Main* at 23. Those holdings are probably correct with respect to the suspension of claims because the district court can consider the taking issue if and when it is asked to dismiss. The nullification of an attachment, however, is final because there will be nothing left to attach in the future.

> serves several important purposes and is vitally related to the President (and his delegee's) purpose to protect those with lawful claims against Iran while preserving the President's flexibility to adopt an approach to satisfy claims in an orderly and equitable fashion. App. 16a.

The reasonable expectations of claimants who may proceed before the Claims Tribunal will, to some degree at least, be satisfied through the establishment of the Tribunal. The reasonable expectations of petitioner are wholly frustrated.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari to the Court of Appeals for the District of Columbia Circuit Before Judgment should be granted in petitioner's case,[9]

[9]If the Court does not choose to grant petitioner's writ at this time we respectfully request that the Court put the petition on "hold" status pending the Court's final disposition of *Dames & Moore*.

and the Order of the District Court entered June 11, 1981, should be reversed.

Respectfully submitted,

DAVID GINSBURG,
Counsel of Record,
LEE R. MARKS,
ALAN S. WEITZ,
SUSAN A. COBB,
JAMES F. WALLACK,
GINSBURG, FELDMAN,
WEIL AND BRESS
Suite 300
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 637-9000

Attorneys for Petitioner,
American Bell International Inc.

Of Counsel:
JAMES A. DEBOIS
FRANK M. STEADMAN, JR.
195 Broadway
New York, NY 10007
(212) 393-9800

Dated: June 15, 1981

EXHIBIT A

PARENT COMPANIES AND AFFILIATES OF AMERICAN BELL INTERNATIONAL INC.

American Telephone and Telegraph Company
New York Telephone Company
American Telephone and Telegraph Company of Arkansas
American Telephone and Telegraph Company of Baltimore City
American Telephone and Telegraph Company of Delaware
The American Telephone and Telegraph Company of Illinois
American Telephone and Telegraph Company of Indiana, Inc.
American Telephone and Telegraph Company of Michigan
American Telephone and Telegraph Company of New Jersey
The American Telegraph and Telephone Company of Pennsylvania
American Telephone and Telegraph Company of Rhode Island
American Telephone and Telegraph Company of Virginia
The American Telephone and Telegraph Company of Wisconsin
American Telephone and Telegraph Company of Wyoming
Bell Telephone Company of Nevada
The Bell Telephone Company of Pennsylvania
Bell Telephone Laboratories, Incorporated

195 Broadway Corporation
The Champaign Telephone Company
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company of Maryland
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Cincinnati Bell, Inc.
Cuban American Telephone and Telegraph Company
The Diamond State Telephone Company
East Pittsburgh Telephone Company
Eastern Telephone and Telegraph Company (Canada)
Empire City Subway Company (Limited)
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Incorporated
Malheur Home Telephone Company
Manufacturers' Junction Railway Company
Michigan Bell Telephone and Telegraph Company
Muberts Development Company
Nassau Recycle Corporation
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
Northwestern Bell Telephone Company
The Ohio Bell Telephone Company
The Ohio Telephone and Telegraph Company
Pacific Northwest Bell Telephone Company

The Pacific Telephone and Telegraph Company
Sandia Corporation
Southern Bell Telephone and Telegraph Company
South Central Bell Telephone Company
The Southern New England Telephone Company
Southwestern BEll Telephone Company
Southwestern Bell Telephone Company of Arkansas
Southwestern Bell Telephone Company (Oklahoma)
Teletype Corporation
Teletype International Sales Corporation
Texas Compensation Insurance Company
Transoceanic Cable Ship Company, Incorporated
Transoceanic Communications, Incorporated
Transpacific Communications, Incorporated
Western Electric Company, Incorporated
Western Electric Company, Limited (London)
Wisconsin Telephone Company
Arkansas Bell Telephone Company
Kansas Bell Telephone Company
Missouri Bell Telephone Company
Oklahoma Bell Telephone Company
Texas Bell Telephone Company
Texas Bell Communications
Southwestern Redevelopment Corporation
The AMPS Corporation
AT&T International, Inc.
Western Electric International, Inc.
AT&T International Far East, Limited

CERTIFICATE OF SERVICE

I certify that on June 15, 1981, I caused to be served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit Before Judgment and Appendix thereto by hand to:

The Honorable Rex Lee
Solicitor General
Department of Justice
Washington, DC 20536
for the United States

Abourezk, Shack & Mendenhall, P.C.
Suite 500
1129 - 20th Street, NW
Washington, D.C. 20036
for the Islamic Republic of Iran and the Ministry of Defense of the Islamic Republic of Iran, Respondents, and for the Islamic Republic of Iran, Intervenor in *Dames & Moore v. Regan,* No. 80-2078

and

Tuttle & Taylor Incorporated
Suite 805
1901 L Street, NW
Washington, DC 20036
for Dames & Moore, Petitioner in *Dames & Moore v. Regan,* No. 80-2078

and by overnight courier to:

C. Stephen Howard, Esq.
Tuttle & Taylor Incorporated
609 South Grand Avenue
Los Angeles, California 90017
for Dames & Moore,
Petitioner in *Dames & Moore v. Regan*,
No. 80-2078

and

Leonard B. Boudin
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
30 East 42nd Street
New York, NY 10017
for Bank Markazi Iran,
Intervenor in *Dames & Moore v. Regan*
No. 80-2078

/s/ Lee R. Marks

Lee R. Marks